

ANALYSIS OF ORIGINAL BILL

Author: Baldwin Analyst: Paul Brainin Bill Number: AB 2245
Related Bills: SB 141 (95/96) Telephone: 845-3380 Introduced Date: 02-19-98

Attorney: Doug Bramhall Sponsor: Laurence F. Haines, atty.

SUBJECT: Limited Liability Companies/Professional Services

SUMMARY

This bill would amend the Corporations Code to specify that a limited liability company (LLC) may not engage in certain professional services, but to allow an LLC to engage in any other lawful activity. This bill also would repeal the law which prohibits LLCs from engaging in professional services.

EFFECTIVE DATE

This bill would be effective January 1, 1999.

PROGRAM BACKGROUND

The Beverly-Killea Limited Liability Company Act authorized the creation of limited liability companies (LLCs) in 1994. An LLC is a form of hybrid unincorporated business association entity, having two or more members, which affords its members:

- limited liability, with the extent of a member's liability limited to equity investment;
- flexible management alternatives; and
- liberal membership qualification requirements.

LLCs combine traditional corporate and partnership characteristics and resemble forms of limited liability organizations which have been well known and widely used in Europe and South America. Members of an LLC are afforded the same advantage of limited liability as are shareholders of a corporation while usually being subject to only one level of income tax as are the limited partners of a limited partnership. LLCs lack the membership restrictions imposed on S corporations.

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___X___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO ___

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director Date
G. Alan Hunter 3/30/98

Agency Secretary Date

By: Date

SPECIFIC FINDINGS

Current federal law does not recognize LLCs, but treats them as partnerships or corporations or entities that are disregarded for federal tax purposes.

Current state law allows domestic or foreign LLCs to engage in any lawful business except the banking, insurance, or trust company business. Furthermore, LLCs are not permitted to render professional services unless expressly authorized by law.

State law defines professional services as any type of professional services which may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code or the Chiropractic Act.

This bill would allow LLCs to engage in any lawful business activity, even if the activity requires licensing, certification, or registration pursuant to the Business and Professions Code. However, this bill would except certain professional services, which include medical, legal, accounting, and engineering businesses.

This bill would repeal the law prohibiting LLCs from rendering professional service unless expressly authorized.

Implementation Considerations

There would be no significant implementation concerns regarding this bill.

FISCAL IMPACT

Departmental Costs

There would be no departmental costs associated with this bill.

Tax Revenue Estimate

It is estimated this bill would increase current law revenue losses attributed to LLCs on the order of \$1 million annually.

Estimated Revenue Impact of AB 2245 Enactment Assumed After June 30, 1998 (In \$Millions)			
Fiscal Year	1998-99	1999-00	2000-01
Revenue Impact	(1)	(1)	(1)

Any possible changes in employment, personal income, or gross state product that might result from this proposal are not taken into account.

Tax Revenue Discussion

Revenue effects would depend on the number and type of qualified entities becoming LLCs and the difference between what their tax liability would have

been as another type of entity and what their tax liability would be under LLC requirements (minimum tax and fees).

Descriptive data for existing LLCs are not yet available. The current law revenue estimate is that both revenue gains (e.g. LLC minimum tax and fees) and losses (e.g. loss of corporate entity tax, pass-through of operating losses) would occur, but, on balance, net revenue losses are on the order of \$5 million annually. It is projected that the net impact of this bill would not exceed 20% of current law.

BOARD POSITION

Pending.